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RUEHZL/EUROPEAN POLITICAL COLLECTIVE

UNCLAS SECTION 01 OF 04 TALLINN 000112

SIPDIS

DEPT FOR EB/TTP/IPE BOGER, FOR EUR/NB GROVES

DEPT PLEASE PASS TO USTR FOR LMOLNAR

DOC FOR PETERS

DOC PLEASE PASS USPTO

SIPDIS

SENSITIVE

E.O. 12958: N/A

TAGS: ETRD KIPR ECON EUR EN

SUBJECT: ESTONIA: VOLUNTARY INPUT FOR 2007 SPECIAL 301
REVIEW

REF: A) STATE 7944 B) 06 TALLINN 424 C) 07 TALLINN 66

D) 06 TALLINN 156

¶11. Summary: In 2006, the GOE continued to improve the country's intellectual property rights (IPR) regime through legislative changes and cooperation with rights holders. The long-awaited new Civil Procedure Act that provides for ex parte searches came into force January 1, 2006. On June 14, 2006, the Estonian Parliament ratified the World Phonogram Producers Treaty and the World Copy Right Treaty. The year also witnessed new cooperation initiatives between law enforcement agencies and industry. While traditional forms of piracy continued to decrease, internet piracy in tech-savvy Estonia is an ever-growing concern that calls for better training of law enforcement agents. End summary.

¶A. NOTORIOUS MARKETS

¶12. There are no notorious markets for counterfeited goods in Estonia. Smaller collections of shops near the harbor and in other parts of Tallinn still exist which continue to sell pirated CDs alongside legitimate goods. Pirated CDs are seized at shops like these occasionally. (See para 14).

¶B. Optical Media Piracy (CDs, VCDs, DVDs)

¶13. In 2006, optical media piracy in Estonia continued to decline. The days of large-scale trade in pirated materials are long gone. Post's Economic Specialist made several visits in 2006 to markets near the harbor area which cater largely to Finnish tourists. On these occasions, she observed card tables trading CDs, videos, and DVDs at relatively high prices. While it is possible that some of these items may have been pirated, such vendors are also known to sell legitimate copies. According to a local anti-piracy NGO, the Estonian Organization for Copyright Protection (EOCP), the physical market for pirated audio-video items has decreased significantly, including around the harbor area, which over the past year has been under special police surveillance.

B.1. INTERNET PIRACY AND COOPERATION WITH RIGHTS
HOLDERS

¶4. In 2006, the Internet continued to be the biggest IPR challenge in Estonia, as in other countries with well-developed IT sectors. While optical media piracy has shown a vast decline in the past few years, the internet has become the most troublesome outlet for pirated material in Estonia, especially File Transfer Protocol (FTP) servers and peer-to-peer (P2P) systems. EOCP has entered into memorandums of understanding (MOU) with ten major Internet Service Providers (ISPs). Five of the MOUs were signed in 2006, including with ISPs in Northeast Estonia, where a large number of the consumers of Russian language media are located. While these MOUs allow for the removal of illegal copyrighted materials from public FTP servers, there are still small, local ISPs that offer server services to swap music, film and software files. In 2006, the EOCP closed 2,080 web sites and removed 29,676 files (in 2005, 232 websites and 3136 files were removed). In May, the EOCP closed down one of the biggest locally administrated websites that offered direct links to pirated music. However, most of the music files were stored on foreign servers. In August, the EOCP closed two major illegal software forum sites that offered direct download links to music, movies and interactive games. Despite the cooperative efforts of industry, police and local ISPs, internet piracy remains a significant problem. File sharing and peer-to-peer networks such as KaZaA, StreamCast, E-Donkey, E-Mule, and BitTorrent remain the largest sources of internet piracy in Estonia. These networks are all located geographically outside of Estonia.

TALLINN 00000112 002 OF 004

¶C. Use/Procurement of Government Software

¶5. The use of software in government offices is in compliance with national and international copyright standards. According to the GOE Informatics Center, every government office has designated a person/section to be responsible for information systems, including procurement and development of software. The GOE implements rules and regulations for government software procurement.

¶D. TRIPS compliance, FTA Implementation and Other IPR
Related Issues

¶6. Estonia continues to make progress on promulgating IPR-related legislation. On January 1, the long-awaited legislation on ex parte searches encoded in the new Civil Court Procedure Act (CCPA) came into force. Major changes to the IPR penal policy were introduced by the Amendment Law to the Penal Code (ALPC) which passed two readings in 2006 and was adopted by the Parliament on January 24, 2007. The ALPC classifies trade in pirated copies as a crime even when it occurs for the first time - previously it was only a misdemeanor. However, according to the ALPC, the use of a pirated copy for a public performance or public display of the work or for communication is a misdemeanor, unless committed for commercial purposes. This classification may pose major difficulties for the investigation of IPR crimes in the digital environment. Under Estonian legislation, no criminal procedures such as the use of undercover officers and surveillance can be used when investigating misdemeanor acts. The ALPC

will come into force on March 15, 2007.

¶17. In 2006, the IPR Expert Committee of the Ministry of Culture (MOC) proposed a process for promulgating a new Copyright Act. The current Copyright Act dates from 1992, and has been amended 20 times. The aim of the new legislation is to harmonize the language, restructure the Articles, and to strengthen copyright protections for Soviet-era authors. Observers expect language for the new legislation to be complete by ¶2008.

¶18. In 2006, two optical disc plants continued their production in Estonia: 'Digibox' in Tartu, and the Lithuanian-based Baltic Optical Disc (BOD) plant in Tallinn. The managers of the companies have declared that their activities fully comply with the copyright laws, they work very closely with IPR organizations, and they are actively involved in anti-piracy actions. The International Federation of the Phonographic Industry (IFPI) has taken samples of the molds of the CD/DVD lines of both of the plants located in Estonia and provided them with mold Source Identification Codes (SID).

¶19. While Estonia has no legislation mandating the use of SIDs on locally manufactured CDs, BOD and Digibox have each entered into civil agreements with the Nordic Copyright Bureau (NCB) on IPR protection. According to the EOCP, such civil agreements between IPR organizations and producers have proven to be very effective. While source identification in Estonia is regulated by civil agreements, the GOE does not anticipate making SID provisions mandatory by law. According to the Ministry of Culture however, the GOE will consider this step if the production situation changes in Estonia.

¶E. DATA PROTECTION

¶10. Not applicable in the Estonian market.

¶F. PRODUCTION, IMPORT AND EXPORT OF COUNTERFEIT GOODS

TALLINN 00000112 003 OF 004

¶11. Recent seizures of pirated CDs at local shopping centers show that there is some domestic supply in Estonia. However, law enforcement agencies as well as anti-piracy groups consider Estonia more a transit country than a source country for counterfeit goods. According to Estonian Customs, most of the IPR-infringing goods that have been detected have been in transit to Russia. Only a small quantity of IPR-infringing goods was transported from Russia to the European Union customs territory through Estonia via 'suitcase piracy'.

¶G. ENFORCEMENT

¶12. In 2006, the Estonian Tax and Customs Board detected counterfeit trademark goods in 106 cases, detaining 97,698 items in total. The biggest cases involved spare parts for cellular telephones (Nokia, Alcatel, Siemens, Ericsson), in which authorities seized some 45,819 items. Also, clothes with counterfeit trademarks form another big category in Estonian Customs' fight against IPR infringement. In 2006, they seized 31,334 of these items. However, according to our interlocutors, rights holders rarely

initiate legal proceedings in cases where only small quantities of their own goods are detected. The industry considers the proceedings too time-consuming relative to the perceived benefit of pursuing such cases.

¶13. Local industries have made some progress submitting annual applications to Customs which allow Customs to seize suspected pirated goods on their behalf. (Note: These applications are required in accordance with European Council Decision number 1383/2003 of July 2003. End Note.) To date, about 300 applications have been submitted, the vast majority of which come from trademark representatives. While EOCP, representing music and film industry, has submitted applications for some companies, a number of them have expired. The Business Software Alliance has not submitted any applications. Without such applications, Estonian Customs can only seize suspected goods for three days, which is generally insufficient time to determine if the goods are pirated or counterfeit.

¶14. In 2006, Estonian Police seized 4,234 pirated optical media items; a decline of almost 70% compared to 2005. According to our police contacts, the reduction in seizures of pirated audio/video materials is due to falling demand on the local market. Customers who seek pirated materials consider the prices too high, when they can often get the same products over the internet for free.

¶15. In December 2006, after EOCP made some test-purchases, police raided shops on the site of a former notorious market and seized 680 CDs and DVDs containing pirated games, movies and music. Police arrested the vendor and initiated a criminal investigation.

¶16. The police tell us that the Internet is clearly the most common outlet for pirated audio/video media. Limited resources do not allow police to wage large scale operations against internet piracy. Currently, about ten police officers from the IT crime groups in Estonia are working on internet piracy under EOCP supervision. Only the North Police Prefecture (Tallinn region) is able to carry out sustained internet monitoring on its own. In 2006, their efforts resulted in the filing of 12 criminal cases in criminal court against IPR violations in the digital environment. In addition, the South Police Prefecture seized 1,000 copies of pirated audio/video materials as a result of internet ads analysis. However, according to our police contacts, the biggest obstacle in the fight against ever-growing IPR violations in the digital environment is a lack of training.

¶17. In 2006, cooperation on IPR-related cases between various law enforcement agencies improved. The police organized several successful raids together with

TALLINN 00000112 004 OF 004

Customs. Police cooperation with IPR NGOs also improved. SNB-REACT training on trademark was particularly useful, and resulted in effective raids in the Tallinn harbor area and central market. Counterfeit spare parts for cellular phones and cosmetics were seized in large quantities. (Note: SNB-REACT is a non-profit coalition of rights owners operating jointly against the trade in counterfeited goods in Europe. End note.)

H. TREATIES

¶18. On June 14, 2006, the Parliament ratified the two WIPO treaties which had been pending since Estonia's

accession to the EU: the World Phonogram Producers Treaty (WPPT) and the World Copyrights Treaty (WCT). However, according to a March 2000 EU decision, the WPPT and WCT ratification letters from member states and the European Community should be submitted simultaneously. Our contacts at the Ministry of Culture tell us that the current holder of the EU Presidency, Germany, plans to submit all ratification letters in May 2007.

II. POST'S ACTIVITIES

¶19. Promoting effective Intellectual Property Rights protection remains a priority for Embassy Tallinn. The Embassy remains engaged with the GOE on the need to continue to upgrade Estonia's IPR regime. In 2006, Post selected a Senior District Prosecutor for participation in an International Visitors Program on Protection of Intellectual Property Rights.

¶20. In January 2006, two lawyers from the Estonian Patent Office attended a course on patents at the U.S Patent and Trademark Office (USPTO) Global Intellectual Property Academy (GIPA). In September, two Estonian Police Officers received training on law enforcement at GIPA. Following the course, one of the police officers was chosen to supervise an Estonian team advising EU candidate countries on accession.

¶21. On April 27-28, 2006, Embassy Tallinn and the USPTO hosted an international workshop on 'Copyright Infringement in the Digital Environment'. More than eighty people - police, prosecutors, government officials and industry representatives - from 16 countries attended. The conference featured practitioners from the USPTO, the FBI, the Department of Justice, and industry representatives. Participants exchanged best practices on gathering evidence and prosecuting intellectual property crime on the internet and discussed the need for closer cooperation on internet piracy cases. The workshop offered a forum for sharing best practices between the United States, EU Member States, and industry on this new and growing form of IPR violation, and also for raising public awareness about internet piracy. (REF B) A follow-up workshop was held in Tallinn on January 17-18, 2007 (REF C).

¶22. In August 2006, under Econoff's initiative, the American Chamber of Commerce in Estonia established an IPR Sub-Committee. The goal of this committee is to contribute to Estonia's IPR efforts by bringing together the Business Software Alliance, private companies, the EOCP and other interest groups on a regular basis. In 2007, the AmCham IPR Committee has hosted two seminars to raise public awareness and promote IPR education, - one for teachers and another for small and medium businesses.

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